

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	Criminal No. 01-780
	:	
JMEAL COLLINS	:	
a/k/a "Paul Van Loan"	:	

MEMORANDUM ORDER

Defendant is charged with knowing possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1). The indictment also contains a notice of the government's intent to proceed against defendant as an armed career criminal pursuant to 18 U.S.C. § 924(e) and the prior felony convictions on which it relies.¹

Defendant moved to suppress as evidence the firearm seized by police which underlies this indictment. The court held a hearing on the motion. The government presented three witnesses whose testimony regarding the events surrounding the

¹The armed career criminal provision does not create a distinct substantive offense but rather merely mandates an enhanced sentence for persons convicted of violating § 922(g). See U.S. v. Abernathy, 277 F.3d 1048, 1050 (8th Cir. 2002); U.S. v. Santiago, 268 F.3d 151, 156 (2d Cir. 2001); U.S. v. Dorris, 236 F.3d 582, 587 (10th Cir. 2000); U.S. v. Mack, 229 F.3d 226, 231 (3d Cir. 2000); U.S. v. Gibson, 64 F.3d 617, 625-26 (11th Cir. 1995); U.S. v. Henry, 933 F.2d 553, 558 (7th Cir. 1991), cert. denied, 503 U.S. 997 (1992). The existence of each prior conviction is ultimately for determination by the court at the time of any sentencing. See Apprendi v. New Jersey, 530 U.S. 466, 490 (2000); Abernathy, 277 F.3d at 1049-50; U.S. v. Latorre-Benavides, 241 F.3d 262, 264 (2d Cir. 2001); U.S. v. Pacheco-Zepeda, 234 F.3d 411, 414 (9th Cir. 2001); U.S. v. Martinez-Villalva, 232 F.3d 1329, 1332 (10th Cir. 2000); U.S. v. Powell, 109 F. Supp. 2d 381, 384 (E.D. Pa. 2000).

seizure of the firearm the court found to be credible. The pertinent facts, as found by the court, are as follow.

A Philadelphia Police Department communications dispatcher received a telephone call on the morning of August 21, 2001 from a female caller with information which led to defendant's arrest. As with every such call, the dispatcher's display screen immediately revealed the address from which the individual was calling. The address was Apartment C at 8310 Pickering Street in the Mt. Airy section of Philadelphia. The dispatcher asked the caller to confirm that this was the address at which she was located. The caller confirmed that it was.

The caller stated that she wanted to report someone she knew to be driving with a handgun under the seat of his car. She related that she had just seen this person in possession of the gun, he had just left her apartment and he should be heading towards Lincoln Drive "because that's the way he goes." She described the individual as a heavyset light-skinned black male with a short haircut, and specified the color of the shirt, pants and boots he was then wearing. She described his car as a 2000 black Lincoln without a license plate but with a sticker in the window.

The caller expressed apprehension about having her identity revealed. She told the dispatcher that "[i]f anybody

says I called from this address, he is going to know I did it" and "he'll have somebody do something to me."

Officers Jamanda Beard and Kevin Clanton were dispatched to pursue this information. They proceeded in a marked police car to the caller's address with the intent of speaking with her directly. Both officers were in uniform. Upon arriving at 8310 Pickering Street, the officers observed a recent model black Lincoln with a temporary paper license tag in the rear window at the curb. The driver and lone occupant matched the description provided by the caller.

Officer Beard pulled up behind the Lincoln in the police car. When the driver of the Lincoln attempted to pull out, Officer Beard moved the police car forward and diagonally. She believes that the Lincoln still could have gotten by and thus was not literally blocked. Officer Clanton believes that the Lincoln was effectively blocked. For purposes of this motion, the court assumed defendant's vehicle was blocked.

The officers observed defendant moving his head up and down and bending down toward his right side. Officer Beard exited the police car with her firearm drawn in an "on guard" position at her waist and positioned herself at the rear of the Lincoln. Officer Clanton exited the police car, drew his firearm and approached the driver's side of the Lincoln. The officers

were concerned for their safety. Based on the report of a firearm and defendant's movements, this concern was reasonable.

Officer Clanton asked defendant to show his hands. Defendant failed to do so and kept moving his hands. Officer Clanton repeated the direction to defendant to show his hands three more times before he complied. Officer Clanton then directed defendant to get out of his car and move toward the rear of the vehicle where Officer Beard was positioned.

Defendant got out of the car. He was wearing a long black shirt hanging out over his waistband. He began to walk toward the rear of the Lincoln. He reached for his waistband with his right hand and withdrew a handgun. Officer Beard yelled "gun." Defendant then threw the handgun and ran toward the adjacent apartment complex. Defendant tripped and was apprehended and placed under arrest by Officer Beard. Officer Clanton recovered nearby a loaded semi-automatic handgun.

Police may stop and briefly detain a person for investigative purposes if they have a reasonable suspicion supported by articulable facts that criminal activity may be afoot. U.S. v. Sokolow, 490 U.S. 1, 7 (1989); Terry v. Ohio, 392 U.S. 1, 30 (1966). The requisite level of suspicion "is considerably less than proof of wrongdoing by a preponderance of the evidence" and "can arise from evidence that is less reliable

than what might be required to show probable cause." Sokolow, 490 U.S. at 7.

An investigative Terry stop may be justified by information related by an informant. Contrary to defendant's suggestion, the police in this case did not act upon a fleshless anonymous tip.

The informant confirmed her address and knew she could be identified from it. Indeed, she expressed fear of the police revealing to defendant the location from which the call was made. See U.S. v. Nelson, 284 F.3d 472, 481 (3d Cir. 2002) (caller who knows she could potentially be identified not truly anonymous).² The information was firsthand and current. The caller displayed a particular familiarity with the subject of the information. See Alabama v. White, 496 U.S. 325, 332 (1990). The officers also observed defendant behaving suspiciously. See Nelson, 284 F.3d at 477. Where information concerns a gun, there is a particular need for police to proceed with some dispatch. See U.S. v. Roberson, 90 F.3d 75, 81 n.4 (3d Cir. 1996).

Officers may use force "reasonably necessary to protect their personal safety and to maintain the status quo" in effecting a Terry stop without converting it into an arrest. U.S. v. Hensley, 469 U.S. 221, 235 (1985). See also Terry, 392

²The informant was in fact identified by her address and subpoenaed as a trial witness.

U.S. at 7. Such force may include the blocking of a suspect's vehicle, approaching with a drawn firearm and ordering the suspect out of his car. See U.S. v. Sharpe, 470 U.S. 675, 678 (1985); Hensley, 469 U.S. at 224; U.S. v. Conyers, 118 F.3d 755, 757 (D.C. Cir. 1997); U.S. v. Young, 105 F.3d 1, 8 (1st Cir. 1997); U.S. v. Edwards, 53 F.3d 616, 619 (3d Cir. 1995); U.S. v. Perea, 986 F.2d 633, 644 (2d Cir. 1993); U.S. v. Jones, 759 F.2d 633, 637 (8th Cir.), cert. denied, 474 U.S. 837 (1985); U.S. v. Garza, 10 F.3d 1241, 1246 (6th Cir. 1993); U.S. v. Tilmon, 19 F.3d 1221, 1226 (7th Cir. 1994); U.S. v. Taylor, 716 F.2d 701, 708 (9th Cir. 1983).

It was perfectly proper for the police officers to proceed to 8310 Pickering Street to speak directly with the caller. Upon seeing a vehicle and driver matching the caller's description, and observing the driver's furtive or suspicious movements, the officers were justified in briefly stopping him to investigate the presence of a concealed firearm. The officers were reasonably concerned about their safety. When the driver repeatedly refused to show his hands while continuing to move them about, the level of reasonable suspicion and apprehension understandably intensified and Officer Clanton was clearly justified in asking defendant to step out of the car. When defendant pulled a firearm from his waistband and threw it while

attempting to flee, the officers had probable cause to arrest him.

ACCORDINGLY, this day of April, 2002,
consistent with the oral findings and ruling of the court
following a hearing on defendant's Motion to Suppress Physical
Evidence, **IT IS HEREBY ORDERED** that said Motion is **DENIED**.

BY THE COURT:

JAY C. WALDMAN, J.